

ESTTA Tracking number: **ESTTA606196**

Filing date: **05/25/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	The Candy Company, Inc.		
Entity	Corporation	Citizenship	Georgia
Address	450 S. Cemetery Street Suite 201 Norcross, GA 30071 UNITED STATES		

Attorney information	Michael A. Penn Briskin, Cross & Sanford, LLC 1001 Cambridge Square Suite D Alpharetta, GA 30009 UNITED STATES mpenn@briskinlaw.com Phone:770-410-1555
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Registration Subject to Cancellation

Registration No	4273018	Registration date	01/08/2013
Registrant	Yogen Fruz U.S.A., Inc. 210 Shields Court Markham, Ontario, L3R8V2 CANADA		

Goods/Services Subject to Cancellation


Class 043. First Use: 2011/02/28 First Use In Commerce: 2011/02/28 All goods and services in the class are cancelled, namely: Restaurant services; take-out restaurant services
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Related Proceedings	Petitioner has received final refusal to register its mark, "U-SERV Market" in its USPTO Application No. 85632755.

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85632755	Application Date	05/23/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	U-SERV MARKET		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2009/01/15 First Use In Commerce: 2009/01/15 Retail convenience stores; Retail storeservices featuring a wide variety of consumer goods of others; Retail store services featuring food and beverage.; Retail food and beverage stores
Attachments	85632755#TMSN.jpeg(bytes) Petition to Cancel.pdf(160751 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael A. Penn/
Name	Michael A. Penn
Date	05/25/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re:

Registration No. 4273018

Mark: ÜSERVE

The Candy Company, Inc.,

Petitioner,

v.

Yogen Fruz, U.S.A., Inc.,

Registrant.

PETITION FOR CANCELLATION OF REGISTERED MARK

COMES NOW, The Candy Company, Inc., a Georgia corporation, and petitions the United States Patent and Trademark Office Trademark Trial and Appeal Board to cancel the above referenced trademark registration, and shows the following:

1. Petitioner is the owner of the mark, “U-SERV MARKET”, and has a pending application for registration for said mark, Application No. 85632755, for the following goods and services: “Retail convenience stores; Retail store services featuring a wide variety of consumer goods of others; Retail store services featuring food and beverage; Retail food and beverage stores,” in International Class 35, which Application was filed on May 23, 2012 and is currently pending.

2. Petitioner has used its mark in commerce since at least as early as March 18, 2010.

3. Registrant is the owner of the mark, “ÜSERVE”, for which it maintains an active registration at Registration No. 4273018 for “Restaurant services; take-out restaurant services” in International Class 43.

4. Registrant claimed in its Statement of Use, filed with the USPTO on October 25, 2012, its first use of its mark as early as February 28, 2011.

5. As a result of the registration of Registrant's mark, the Examining Attorney in Petitioner's Application has issued a Final Office Action denying registration of Registrant's Mark under Section 2(d).

5. Due to the similarity of the Applicant's Mark and the Registrant's mark, Petitioner believes that it will be damaged as a result of the continued registration of Registrant's Mark.

WHEREFORE, based upon the foregoing, Petitioner respectfully requests cancellation of Registrant's Mark, ÜSERVE, at Registration No. 4273018.

This 25th day of May, 2014.

Briskin, Cross & Sanford, LLC

By: /s/ Michael A. Penn

Michael A. Penn

Attorney for Petitioner

Ga. State Bar No. 571325

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